A. I. R. 1935 Bombay 361

MURPHY AND BARLEE, JJ.

Devchand Totaram Kirange and *another*—Plaintiffs—Appellants.

v.

Ghanashyam Sakharam Chaudhari and others—Defendants—Respondents.

First Appeal No. 289 of 1928, Decided on 15th January 1935, from decision of First Class Sub-Judge, Jalgaon, in Special Regular Civil Suit No. 497 of 1924.

(a) Jurisdiction — Civil Court — Whether particular cult is within Vedic religion or not—Civil Court is not competent to decide —Civil P. C., S. 9.

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વર્ષ ૧૯૩૫ નો મુંબઈ હાઈ કોર્ટનો કેસ છે.

જેમાં લેવા પાટીદાર સમાજે **ધર્મના આધારે સતપંથીઓ ને સમાજ બહાર કરેલ હતા** અને કોર્ટે ચુકાદો આપ્યો, જેમાં મુખ્ય મુદ્દા હતા...

૧) કોર્ટને સમાજના લીધેલ નિર્ણયોમાં હસ્તક્ષેપ કરવાનો કોઈ અધિકાર નથી.

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જો સમાજ કોઈ સભ્યને સમાજ બહાર કરે તો કોર્ટને અટકાવવાનો કોઈ અધિકાર નથી.

leva patidar caste as a whole. That is a question for the caste itself. [P 362 C 2]

(b) Limitation Act (1908), Arts. 36 and 24 —Suit for compensation for exclusion of plaintiff from their civil rights in caste is governed by Art. 36—Caste.

A suit for compensation for exclusion of the plaintiffs from their civil rights, if occasion arises for their exercise, in the administration of the caste funds, and the benefits, of being able to scrutinize the caste accounts, is mainly intended to vindicate rights of plaintiff as members of caste and is governed by Art. 36 and not by Art. 24. [P 363 C 1]

(c) Caste— Properly assembled panchayat has jurisdiction to outcaste members committing caste offences— If proceedings are in order, civil Court cannot interfere.

A properly assembled caste panchayat has jurisdiction to outcaste members of its community who have committed caste offences and when the panchayat's proceedings are in order and consonant to natural justice, Courts of law cannot by decree interfere with them. [P 364 C 2]

(d) Caste—Panchayat — Courts cannot lay down rules as to procedure.

Courts cannot lay down rules as to the procedure to be followed by a caste panchayat in such matters which are for the panchayat itself. [P 364 C 2]

સમાજની કાર્ય પ્રણાલી નક્કી કરવાનો કોર્ટને કોઈ અધિકાર નથી.

(e) Caste –Panchayat—Notice to members of caste— Standard cannot be that of civil Court.

The standard of notice of caste meeting cannot be that of a civil Court to a party to a suit and if it is found that actually there was a widespread notice of a meeting in the customary way, enabling a substantial proportion of the caste to attend, the requirements of natural justice are broadly satisfied. [P 365 C 1]

M. R. Jayakar and *W. B. Pradhan*—for Appellants.

A. G. Desai—for Respondents.

Murphy, J.—These two first appeals have very similar subject-matters and have been heard together as the two suits were tried together in the Court below. They turn on the constitution of the leva patidar caste and its government. The leva patidars were migrants from Gujerat to the north-east of the Khandesh District in the Yaval taluka and some of the caste have gone beyond and into adjacent villages in the Nizam's Dominions and Berar. The headquarters of the caste are at Padalsa and there the kutumb-nayaks, or representatives of the leading families, reside. These by turn are leaders of the caste, and summon the caste panchayat and also issue its decisions. A panchayat is convened by sending a summons in the form of a notice, in a book kept for the purpose, by messengers from village to village, till all those in which leva patidars are living have been served. The messenger takes the book to the leading man of each village and he, and sometimes other leading men as well, sign it in token of acknowledgment, and, it is then these persons' duty to communicate the notice of the meeting to their fellow villagers.

સતપંથનો મુદ્દો છે.

The point we are concerned with is in reality a caste question. The bulk of the leva patidar caste are ordinary Hindus under Brahminical guidance, but the caste also includes many sects or special cults. The one in question here is that of the Satpanth, which expression means the "truth faith." This cult is said to have been founded in the fifteenth century by a Mahomedan saint named Imamshah. He performed a miracle, which had the effect of converting a certain number of leva patidars to his teaching, and the cult has flourished ever since. Its headquarters are near Ahmedabad where the saint was buried, and his tomb is in charge of his descendants, described in the evidence as the "Syeds." A Hindu "kaka" or religious head of the sect also lives at Pirana and serves his co-religionists. A second seat of Satpanth is at a place called Bahadurpur. This was founded by a grandson of Imamshah and is called the new Satpanth. Except for there being no Hindu teacher, it is, as far as we can gather, a portion of the main Satpanthi cult. Satpanthis are not born into the cult, but become so by initiation and the cult has some scriptures and also certain rites which are described in the evidence, and a comprehensive account of the cult and its history is also to be found in the Ahmedabad District Gazetteer.

ઈમામ શાહ મુસ્લિમ હતા અને હિંદુઓને વટલાવ્યા હતા.

The main question now agitating the leva patidar caste is one which we are not competent to decide. It is whether this cult is within the Vedic religion, or not? The leva patidar caste has decided that the Satpanthis are not Hindus and has outcasted them; and the two plaintiffs have sought redress through the Court. This has been denied them in the Court below, the learned trial Judge holding that the meeting which outcasted them was properly convened and regularly held; and also that the suits were time barred. As to this last finding we disagree with the learned Subordinate Judge. His view was that

લેવા પાટીદાર સમાજે સતપંથને બિન હિંદુ ધર્મ જાહેર કર્યો હતો અને તે પ્રમાણે સતપંથી લોકોને સમાજ બહાર કર્યા હતા.
કોર્ટના પ્રમાણે કોર્ટને ધર્મ હસ્તક્ષેપ કરવાનો અધિકાર નથી.

since the suits were in the nature of ones for damages for defamation, Art. 24, Lim. Act, applied.

The resolution outcasting the plaintiffs was come to on 2nd December 1922, and the suits were filed on 20th November 1924, more than a year from the date of the cause of action. But if the plaint is read carefully, it is clear that the suits were not for relief on this ground, though allusion to such a wrong have been made in the plaint. The ruling case in this Court on suits for relief in which caste questions are involved is 26 Bom 174 (1) in which Chandavarkar J. laid down, broadly, the three classes into which they can be resolved, and the plaint draftsman must have had this ruling in mind and been aware that a suit based on defamation was then barred. We think the Article applicable is 36, as the plaints as framed are for compensation for exclusion of the plaintiffs from their civil rights if occasion arises for their exercise, in the administration of the caste funds, and the benefit of being able to scrutinize the caste accounts., These are remote benefits, hardly assessable to compensation, but Mr. Jayakar has told us that it is not cash the plaintiffs seek but the vindication of their position as Hindus.

The history of the caste schism goes back to plaintiffs' father's time. In 1905-06 the question of Satpanth was, as far as we are concerned, first raised. A very large caste meeting was convened at Padalsa, and it is contended for one side that the meeting condemned the cult itself as being extra-Vedic; and by the other, that all that was disapproved of was some of its practises which savoured of Muhammadanism. The Satpanthis of the day recanted either their belief or the practices disapproved of according to the view one takes and no one seems to have been excommunicated then. Unfortunately the caste resolution of 1906 is not available to us. The original is either lost or it has been suppressed by the defendants' side. A copy from the copy in the Faizpur caste drafter was tendered to the learned Subordinate Judge and rejected as inadmissible. We must gather the purport of the decision from some of the witnesses who were present, and here we think that a distinction has been drawn in the arguments which could hardly have been present to the caste meeting. The caste is one of cultivators, and as the record shows many of them are even now illiterate. We think they could hardly have distinguished between the dogma of the cult and certain of the practices of its followers. There is in any case a strong tradition in the caste that what was condemned in 1906 was the cult itself, and we think it must have been so.

After this nothing much in this connection seems to have happened in the caste, though plaintiff's father was fined Rs. 2,000 for not having closed the Satpanth dharmasala at Faizpur, as he had agreed to do. In 1919 it was discovered that five or six castemen had again lapsed into the Satpanth cult. They were reported and outcasted on the basis of the resolution of 1906, and plaintiff Totaram himself took an active part against the backsliders in that year, see Exs. 51 and 52 signed by him as well as many others, reporting the names of these persons to the kutumb-nayaks. Part of the arguments for plaintiffs is based on these letters as showing that what was then dealt with was the Bahadurpur Satpanth cult and not the old one; but the references to a new Satpanth, may only mean a new recrudescence of it. Nevertheless these five and others gave a caste dinner in the dharmasala of the cult at Faizpur, and this festivity led to 56 more persons of the caste of that place being outcasted, besides others from the neighbouring villages. It has been strenuously urged in this Court, as in the one below, that the five or six fresh Satpanthis were converts to the new and not the old Satpanthi; that is, the Bahadurpur one, but the learned Subordinate Judge has not accepted this argument. In fact there seems to be no real distinction between the two beliefs and we accept his view.

The large number of outcastes so created has led to difficulties in the caste over betrothals, marriages and the status of widows. We are told that betrothals have been denounced, marriages refused, and widows recalled to their parents' houses. It was to settle these difficulties that the caste meeting

1. Nathu v. Keshawj, (1901) 26 Bom 174=3 Bom L R 718.

ફેજપુરની સતપંથ ધર્મ શાળા બંદ ન કરવા બદલ રૂ. ૨૦૦૦ નો દંડ

જુનો અને નવા સતપંથમાં કઈ ફરક નથી

of 1922 was convened. The two plaintiffs were present at this meeting, and took with them to it their legal adviser, but this person not being a leva patidar was not allowed to address it. The plaintiffs themselves however did so. Their main contention was that the question whether their beliefs were extra-Vedic or not, had never been properly examined by any person competent to decide it, and they urged that it should be referred for the opinion of the Shankaracharya. But these arguments were brushed aside and they were told that if they wanted that authority's opinion, they could themselves procure it. The meeting passed six resolutions.

The record of its proceedings opens with a recital of its having been summoned. There is next a preamble stating that in connexion with Satpanth a meeting had been held in 1906, at which it had been resolved that the Satpanth religion was outside the pale of the Vedic religion, and that all persons of the caste should give it up. It next states that Satpanthis then confessed and abjured the cult : but that thereafter some persons had again gone back to it and had been outcasted, as had some more who had dined with the outcastes, and that for this reason marriage ceremonies of relatives of the outcastes were impeded, and in order to solve these difficulties the resolutions which follow were arrived at.

The first resolution recites that of those outcasted, some on purging their heresy have been readmitted, but that those who have not are outcasted as will be all who help them. The second resolution states that those who have formed marriage alliances (really arranged betrothals) with Satpanthi families are authorized to break them off. The third resolution states that widows in Satpanthi families may be recalled to their parents' houses. The fourth provides a time limit within which absent Satpanthis may recant and surrender to their village panchas, who shall transmit a list of such persons to the head panchas. The fifth requires the village panchas to explain the resolutions to absentees from the meeting and more particularly to the followers of the cult or those connected with them, or suspected of it, and to take and record their signatures. And the sixth directs the kutumb-nayaks at Padalsa to prepare a list of outcastes and of those who resuse to comply with the caste's decition, or to give effect at once to the letfers of excommunication. Next comes a note evidently later than 3rd January, the limit for abjuring the cult, saying the lists have been received and annexing a list of those outcasted. The two plaintiffs were accordingly outcasted. This is a precis of the history of the plaintiffs' grievances.

There is no doubt that a properly assembled caste panchayat has jurisdiction to outcaste members of its community who have committed caste offences, and that when the panchayat's proceedings are in order and consonant to natural justice, Courts of law cannot by decree interfere with them. On their face these proceedings appear to be quite regular. They have been attacked on the grounds, that plaintiffs were not given an opportunity to show that their beliels in fact were not repugnant to the Hindu religion, and that the meeting itself was not properly called, as notice of it was not sent to all the villages where leva patidars reside.

As to the first question it would, no doubt, have been within the competence of the panch to seek the opinion of the Shankaracharya or any other authority on the question, or to take evidence on it and so to decide the point, but Courts cannot lay down rules as to the procedure to be followed by a caste panchayat in such matters, which are for the panchayat itself. The Satpanth cult is in fact wellknown. There is a long account of it in the Gazetteer for the Ahmedabad District, and we do not suppose that its tenets were not known to the caste. Moreover, in 1906, there had clearly been a long debate about it, and the meeting in 1922 proceeded on the footing that that panchayat had already made a decree, and that what it was doing was the enforcement of this decree against backsliders and newly won adherents of the cult, who were offered an opportunity to recant, the alternative being to leave the caste. We think there was jurisdiction to act as the panchayat did.

As to the second objection, the system of convening meetings has been described. Messengers were sent with a notice of it to a certain number of vil-

કોર્ટનો નિષ્કર્ષ:
કોઈ વ્યક્તિ, જ્યારે સમાજનો ગુનો કરતી હોય, ત્યારે તેવા વ્યક્તિને સમાજ બહાર કરવાનો અબાધિત અધિકાર, સમાજની નિયમ પ્રમાણે બોલાવેલી અને નિયમ પ્રમાણે ચલાવેલી, સભા ને હોય છે. કોર્ટોને હસ્ત ક્ષેપ કરવાનો કોઈ અધિકાર હોતો નથી.

સતપંથ વિષે ૬ કડક ઠરાવો પસાર કરેલ હતા. તેમાં નોંધ પત્ર હતા... ૧) થયેલ લગ્નને પણ તોડવાની અનુમતિ આપેલ હતી ૨) સતપંથીઓને સમાજ બહાર મુકવામાં આવેલ હતા.

મિટિંગની નોટીસ જાહેરમાં બહાર પાડી હોય, જેનાથી મોટી સંખ્યામાં લોકો આવી સકે, તો

lages, the leading man in each of which had to endorse the messenger's book with a kind of receipt of the notice. In other cases, according to the evidence "chits" were sent to villages where weekly bazaars are held, and post-cards to distant ones, and the villages in Berar got notice through the kutumb-nayak of Datala which is apparently their headquarters. These were the customary modes. According to the plaintiff there are ninety-seven villages in Khandesh and sixty-seven in Berar and Nemad where leva patidars live, but some are probably only hamlets and the number must vary from time to time. There is in fact no real census, and no good ground on which to find on this point. The learned Subordinate Judge thought that the Satpanthi groups refused to acknowledge the notice and to sign the book, but found that eighty-four villages got notice, through the thakoors or messengers and that the representatives of eighty-seven villages were, in fact, present at the meeting of 1922.

Here again it is clear that the standard of notice of a caste meeting cannot be that of a civil Court to a party to a suit; and that if it is found that actually there was a widespread notice of a meeting in the customary way enabling a substantial proportion of the caste to attend, the requirements of natural justice are broadly satisfied, and this is the learned Subordinate Judge's finding, with which we are not prepared to interfere. But the learned Subordinate Judge has also found that though allegations as to the irregularity of the meeting are now made, this is an afterthought, and that at the time no protest on this point was made as appears from Ex. 140, which was a pamphlet published afterwards as an appeal to the whole of the Hindu community, with a full statement of the Satpanth cult's position, the point taken in it being, not that the meeting had been irregularly convened, but that it had refused to listen to arguments, or to consult the Shankaracharya. In fact, the finding is that the panchayat's jurisdiction had been submitted to by the plaintiff. We agree. But even had this not been the finding as to the jurisdiction of the panchayat and the regularity of its proceedings, we think that on the frame of the suit it was not possible to give the plaintiffs any relief. The defendants are said to have been impleaded as being leading men of the caste, and some of them have said in their written statements that they voted against the proposal that the two plaintiffs and others be outcasted because they were Satpanthis, and that they were overruled by the majority.

Had the suit been framed for damages for slander, it might have been possible in certain circumstances to give the plaintiffs decrees on that basis, against persons who took part in the defamatory proceedings; but such suits were time-barred when these were brought. Had the suits been for declarations that the proceedings of December 1922 were void, and had they been brought against the defendants as representatives of the caste, some other remedy might have been open to the plaintiffs. But, on the facts, even had the plaintiffs been able to show that the panchayat meeting of 1922 had no jurisdiction and had been irregularly convened and had decided in contravention of the rules of natural justice, we feel that no relief could have been given to the plaintiffs. In Appeal No. 289 plaintiff Devchand Totaram's grievance is that defendants have denied his civil rights of managing and supervising the caste property and caste funds, for which wrongs he claimed Rs. 3,000 damages; and Rs. 2,250 for the defendants having broken the marriage engagements of his sons and daughter (the actual persons breaking off the betrothals being defendants 1, 2 and 3).

But in the course of the trial of the suits, as appellants' learned counsel, Mr. Jayakar, admitted, the questions of caste rights and damages were lost sight of—there is nothing to show that every leva patidar has as by birth-right a part in the management of caste property, or caste funds, if there be any—for these must clearly be managed by some sort of a committee to which a particular leva patidar may never be nominated or elected, and at most the right would be some sort of voice in such nomination or election; but there is no evidence as to how caste funds are managed, or to show that the plaintiffs were ever excluded from management, or denied the right of supervising the funds. The grievance as to the breaking off of betrothals is rather like a suit for damages for

breach of promise of marriage; but this is another of the pleadings which seems to have been forgotten at the trial and there is no issue upon it and no finding.

Plaintiff Totaram Badhu's suit is similar, though the damages are put at Rs. 30,000. In the plaint the cause of action is that the defendants have unjustly and without any justifiable reason outcasted the plaintiff, and so deprived him of all his civil rights appertaining to the community, and his right to look at or scrutinize the caste fund accounts. But there is nothing to show what the funds are, and what the accounts may be; or evidence to prove that he has ever been refused any such rights. It may of course be said that the act of outcasting the two plaintiffs itself involves a loss of these privileges, but we think that something more is needed. There must clearly be an occasion in each case in which the plaintiff sought to exercise these rights and were refused, and the remedy would clearly be a declaration and injunction against the caste as a whole, sued in a representative suit, but this is not what has been sought. But even such a declaration and injunction seem to be ineffective remedies in the case of such shadowy and vague rights as the plaintiffs have sought to enforce.

The learned Subordinate Judge seems to have been unnecessarily harsh to plaintiff Totaram—he has applied to him the, as far as we can see, undeserved epithets of bare-faced liar, turn-coat, time server and thorough hypocrite, while though he may have been inconsistent, he and the second plaintiff are really fighting on a point of faith. It is not for the Courts to decide, as the learned Subordinate Judge has nevertheless done, that the Satpanth cult is abhorrent to the feelings of the leva patidar caste as a whole. That is a question for the caste itself, and we think that it has decided it, and that its procedure in coming to a decision was not so irregular and contrary to the dictates of natural justice, and that, however the plaints may be framed, what they raised was really a caste question outside our purview. We think the plaintiffs must fail. We confirm the lower Court's decree and dismisss these two appeals with costs.

Barlee, J.—I am unable to agree with the finding of the Subordinate Judge on issue 1, i. e. whether the Court had jurisdiction. The learned Subordinate Judge has relied on 26 Bom. 174 (1). In that case Chandavarkar, J., held that a suit raising a caste question in which the plaintiff complained of the loss of rights of property or office or of defamation was cognizable by a civil Court; and he went on to say:

> If a caste has funds or property which is controlled by all its members and one of its members is excommunicated, he can sue for his right to control it or have a voice in its management and a civil Court can give him relief because he has a civil right.

This, it seems to me, means no more than that a right of management of property is a right to property which can give a civil Court jurisdiction, and so far the statement of the law is unexceptional. But it is difficult to conceive a case to which it would apply, for an autonomous caste can make what rules it pleases, and may at any time hand over the management to its headman or a panch; and, as remarked by Batchelor, J. in 11 Bom. L. R. 1014 (2), a civil Court will not make a decree which can at any time be rendered nugatory, or, I may add, base its finding as to jurisdiction on a mere privilege which can be taken away. In my opinion, therefore 26 Bom. 174 (1) cannot help the plaintiff appellant as he has not based his claim on defamation and does not claim any right to property, apart from the right of management. Further he has admitted that the immovable property of the caste is managed by a committee and that no one has a right of appointment to the Committee (para. 40). The kutumb-nayak, he says, keeps the accounts of the caste. He places them before caste meetings, when every member has a right of inspection. This is as far as he can go. He does not claim that every member has a right of management. Clearly his case is not that visualized by Chandavarkar, J., where every member has a right of management. I think then that the learned Subordinate Judge was wrong and that the plaintiff has not shown grounds on which a civil Court can interfere. Again, I cannot find that the resolution of the caste gave the plaintiff any cause of action except defamation, which is

2. Jethabhai v. Chapsey, (1909) 34 Bom 467=4 I C 108=11 Bom L R 1014.

એક સમાજને જે નિયમ બનવા હોય, તે બનાવી શકે છે.

સમાજ બહાર કરેલ વ્યક્તિ ને મિલકત માં ભાગ મળે નહિ.

not pleaded as a basis for damages. I accept Mr. Jayakar's argument that if he proved an infringement of his right (injuria) he need not prove pecuniary loss (damnum). But there is no evidence that the infringement pleaded, i. e. exclusion from the management of the caste property, had occurred at the date of the suit. He was not at that date a panch and the most that can be said is that as he was not bidden to the caste meetings he had no opportunity of examining the accounts. This hardly seems enough. He could have asked to see them. In any case, the date of the cause of action entered in the plaint is 24th December 1922, the date of the resolution, and he has not complained of any tort apart from it. In other words, his suit is really based on defamation and exclusion from the caste and not on the deprivation of any civil rights.

I agree with my learned brother that an attempt was made to summon the whole caste with the exception of the Satpanthis to the meeting of A. D. 1922, but I am not satisfied that the Satpanthis were summoned. To my mind this does not affect the defence, for the purpose of the meeting was not to consider the question of Satpanth but to carry out the previous resolution of Samvat 1962 (A. D. 1905-06), and it cannot be necessary to convene the whole caste for the purpose of executing its decrees. The meeting of 1962 was regular, at any rate no technical objection to its resolution has been put forward. The complaint is only that the theological question was not considered on its merits by persons competent to decide it. This is probably true and a genuine grievance; but a civil Court cannot dictate to a caste the grounds on which it must act. If the leva patidars chose to say that no one who worships a Muhammadan Pir might continue to be a member, no one can challenge their decision. It appears to me then that the plaintiff's grievance dates back 30 years and it is much too late now for a civil Court to help him. It is also not competent for the civil Court to consider and decide the only point on which he asks a decision whether the Satpanth is within or without the Vedic religion.

Lastly, it has been argued that there is no admissible evidence of the purport of the resolution of 1962, since the book in which it was written has not been produced. There are three answers. Firstly, it is proved that the book has been lost and in consequence oral secondary evidence is admissible. Secondly, the resolution is not a contract or matter which had to be reduced to writing. So oral evidence is not excluded by S. 92, Evidence Act, 1872. The oral evidence too is primary. The witnesses were mostly illiterate, and were giving direct evidence of what they heard at the meeting and not secondary evidence of a document which they had read. Lastly the purport of this resolution was pleaded by the defendants and the plaintiffs in their counter written statement admitted it. It was not a fact which had to be proved. The appeals should be dismissed with costs.

K.S. *Appeals dismissed.*

અગર સમાજ નક્કી કરી કે મુસલમાન પીર ને માનવાવાળા વ્યક્તિ સમાજના સભ્ય ન રહી સકે, તો તે નિર્ણય ને કોઈ પણ પડકાર (challenge) કરી શકે નહિ.